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9 Attorneys for Defendant
10 **CARLOS DE SANTIAGO**

11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHER DISTRICT OF CALIFORNIA

13 **HOWARD HERSHIPS,**

14 Plaintiff,

15 vs.

16 **THE SUPERIOR COURT OF CALIFORNIA,**
17 **COUNTY OF SANTA CLARA, et al.**

18 Defendant.

Case No. 06-CV-6644-MJJ

**NOTICE OF MOTION AND MOTION TO
DISMISS OR, IN THE ALTERNATIVE,
STAY THE FIRST AMENDED
COMPLAINT
(FRCP 12 (b) (6))**

Date: October 9, 2007
Time: 1:30 P.M.
Courtroom: 11
Hon. Martin J. Jenkins

19 **TO PLAINTIFF AND ITS ATTORNEYS OF RECORD:**

20 PLEASE TAKE NOTICE that on October 9, 2007, or as soon thereafter as the
21 matter may be heard in the above entitled court, located at 450 Golden Gate Ave., San
22 Francisco, CA 94102, defendant Carlos De Santiago will move the Court: 1) to dismiss the
23 plaintiff HOWARD HERSHIPS' complaint as to him because the complaint has not
24 alleged sufficient facts to maintain a §1983 cause of action; 2) to dismiss the instant
25 complaint because Carlos de Santiago is entitled to absolute immunity from this suit;
26 and/or 3) to stay the instant action pursuant to *Gilbertson v. Albright* and the *Younger*
27 abstention doctrine. See *Younger v Harris*, 401 U.S. 37 (1971); *Gilbertson v. Albright*, 381
28 F.3d 965, 982 (9th Cir. 2004).

1 This motion to dismiss will be based on this Notice of Motion and Motion to
2 Dismiss or, in the Alternative, Stay the First Amended Complaint; the Memorandum of Points and
3 Authorities in Support of Defendant Carlos De Santiago's Motion to Dismiss or, in the Alternative,
4 Stay the First Amended Complaint; and the pleadings and papers filed herein.

5 Dated: August 30, 2007

6 Respectfully submitted,

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DONALD A. LARKIN
9 Assistant City Attorney
10 CITY OF PALO ALTO
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